

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 294 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAJAPATI K MADHABHAI

Versus

DY SECRETARY

Appearance:

MS KUSUM M SHAH for Petitioners
NOTICE SERVED for Respondent No. 1
MR DAXESH T DAVE for Respondent No. 3
MR SV RAJU for Respondent No. 4
MR ND GOHIL for Respondent No. 5

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/09/2000

ORAL JUDGEMENT

The Deputy Secretary, Urban Development and Urban Housing Scheme, Gandhinagar, passed the order on 20th

December, 1991 directing the Collector, Banaskantha to decide the issue regarding the allotment of the land. The said order is under challenge in this application filed under Article 226 of the Constitution of India.

2. Both the petitioners purchased the land bearing City Survey Nos. 924 and 925 in the year 1975 from the Deesa Municipality which was approved by the Collector. The petitioners were then put into the possession of the respective plots, and thereafter, they constructed the building on the plots, which is by now completed. Adjoining to their plots, there was an open land and hence both the petitioners on 17th April, 1990 gave an application to Deesa Municipality to sell 28' x 20' - 560 sq.ft. land adjoining to their land. The municipality by its resolution No.2 dtd. 22nd May, 1990 resolved to sell the said land to the petitioner and sent the proposal to the Government. The Collector, thereafter on 27th August, 1991 inspected the site and found that there was no objection if the land was granted to the petitioner. The Collector, thereafter by its two separate orders on 20th September, 1991 accepted the proposal of the Municipality to sell the said land to the petitioner. The land was then agreed to be sold at the rate of Rs.600/- per sq.mtr. Each of the petitioners then paid Rs.31,215/- on 1st October, 1991. They were then put into the possession of the said land. Necessary Kabulatnama was then executed and construction was also made on the said land. On 27th December, 1991, to the utter surprise, the petitioner No.2 received the order from the office of the Urban Development and Urban Housing Department, Gandhinagar, directing the Collector to consider afresh the issue regarding the allotment and pass appropriate order keeping Sec. 258(1) of the Gujarat Municipalities Act in mind. It is against that order, the present application is filed calling in question the legality and validity thereof.

3. On different grounds the order in question is assailed, but it is not necessary to dwell upon those grounds, as the petition can well be disposed of on one ground going to the root of the case. It is the submission of the petitioners that the Deputy Secretary, who passed the impugned order did not serve notice on them and afford reasonable opportunity to submit their case. They are thus, condemned unheard. As the principle of natural justice is violated, the order cannot be allowed to be sustained. The same on that count may be quashed and set aside.

4. It is cardinal principle of law that the

authority while passing the order has to issue notice and grant reasonable opportunity to the party, likely to be affected by the order to be passed, and if the order is passed without hearing the affected party, the same cannot be maintained, because no one can be condemned unheard.

5. On going through the copy of the impugned order produced at Annexure-H page No.26, nowhere I find that the notice on the petitioners were issued and served upon them intimating to appear and submit if they so chose. When the opportunity to submit, serving notice is not given to the petitioners, the impugned order, on that count is required to be quashed and set aside, and the Deputy Secretary who passed the impugned order is required to be directed to hear the appeal afresh giving reasonable opportunity to the petitioners and other concerned parties and pass appropriate order in accordance with law.

6. For the aforesaid reasons, this application is allowed, the impugned order passed by the Deputy Secretary on 20th December, 1991 in Revision Application No.168 of 1991 is hereby quashed and set aside. The Deputy Secretary, Urban Development and Urban Housing Department, Gandhinagar, is directed to hear the Revision Application afresh affording all reasonable opportunities to the petitioners and other concerned persons, and dispose the same of in accordance with law within a period of three months from the receipt of the Writ. The parties to maintain status-quo till the first date of the hearing that may be fixed by the Deputy Secretary.

Rule accordingly made absolute.

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